



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

*T.D.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/642,249    08/17/00    SIMON

R

EXAMINER
----------

IM52/1002

JOHNSON & STAINBROOK LLP  
SUITE 130  
175 N REDWOOD DRIVE  
SAN RAFAEL CA 94903

CECIL, T	
ART UNIT	PAPER NUMBER

1723  
DATE MAILED:

10/02/01

*4*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/642,249

Applicant(s)

SIMON ET AL.

Examiner

Mr. Terry K. Cecil

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 August 2000 is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

Art Unit: 1723

Note that applicants' claims 9-15 have been renumbered as claims 8-14 (according to rule 1.126 of 37 CFR) since claim number "8" was skipped.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:
  - The abstract of the disclosure is objected to because it contains legal phraseology, e.g. "said system comprising". Correction is required. See MPEP § 608.01(b).

### *Claim Objections*

2. Claims 3-4, 7 and 9-10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form.
  - In claims 3-4, the type of data fails to further *structurally* define the apparatus of claim 2.
  - In claims 7 and 9-10, the way in which the PLC operates fails to further structurally define the apparatus of claim 5, since it has been decided that claims directed to apparatus must be distinguished from the prior art *in terms of structure* rather than function (see *In re Danly*, 263 F.2d 844, 847 120 USPQ 528, 531, CCPA 1959) and that "apparatus claims cover what a device *is*, not what a device *does*." (emphasis in original) *Hewlett-Packard Co. V. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Circuit.1990). Did the applicants intend to claim the sensors/circuitry (structure) that would allow the system to perform steps claimed?

***Drawings***

3. The drawings are objected to because of the following reasons:

- The following reference signs mentioned in the disclosure are not shown in the drawings:  
“58a” (page 6) and “110” (page 9).
- On page 6 of the specification, reference no. “90” has been used to designate both the “level sensor” and the “truck”. Correction is required.

***Claim Rejections - 35 USC ' 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 5 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ladet et al. (U.S. 4,580,698), hereinafter “Ladet”. Ladet teaches a system comprising the following:

- a hopper “12” having a gate at the lower end outlet thereof that is automatically controlled to be positioned between an opened and a closed position to control the flow of material therethrough (col. 2, lines 56-59);
- a support framework (shown in figure 1) [as in claim 1];
- an operator interface terminal (“18” and “75”) and actuator (e.g. “68”) [as in claim 2];
- a PCL “38” communicating with the OIT and actuator (col. 8, lines 9-16) [as in claim 5]; and

Art Unit: 1723

- a sludge gate that is powered by a system that utilizes pneumatic, hydraulic and electric power (col. 3, lines 54-66 and col. 6, lines 21-34)[as in claims 12-14].

***Claim Rejections - 35 USC ' 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

Determining the scope and contents of the prior art.

Ascertaining the differences between the prior art and the claims at issue.

Resolving the level of ordinary skill in the pertinent art.

Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ladt in view of Nemechek (U.S. 4,401,174), hereinafter "Nemechek". Ladt has been expanded above. Claim 11 has the limitation of a position sensor. Nemechek teaches a position sensor for determining the position of the gate (abstract) [as in claim 11]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the position sensor of Nemechek in the invention of Ladt, since Nemechek teaches the benefit of measuring the amount

Art Unit: 1723

of material dispensed from a hopper—a goal of Ladt—and because Ladt desires specific positioning of the gate (col. 7, line 1).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ladt in view of Schuerger et al. (U.S. 2,997,205), hereinafter “Schuerger”. Ladt has been expanded above. Claim 8 has the limitation of height level sensors. Schuerger teaches sensors “21” and “22” for measuring the height of materials in a hopper [as in claim 8]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the level sensors of Schuerger in the invention of Ladt, since Schuerger teaches the benefit of maintaining the level of material in the hopper in a predetermined range. In the invention of Ladt, this would allow an operator to know when the hopper is empty or warn of a condition in which the hopper would overflow.

9. Claims 6-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ladt, in view of Johnson et al. (U.S. 3,959,636), hereinafter “Johnson”. Ladt has been expanded above. Claim 6 has the limitation of a weigh system for measuring the load-out weight and comprising load cells mounted to the frame-work below the hopper. Johnson teaches a weigh system comprising load cells (shown in figure 1) [as in claim 6]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the weight system of Johnson in the invention of Ladt, since Johnson teaches the benefit of determining the amount of materials dispensed from a hopper—a goal of Ladt.

Art Unit: 1723


As for claims 7 and 9-10 the control system of Ladt, as modified by Johnson, would allow the steps to be performed of 7 and 9-10.

10. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ladt, in view of Schuerger and Allen (U.S. 4,029,163). Ladt has been expanded above. Claims 3-4 have the steps of providing data the includes batch weight and height level of material in the hopper. Schuerger teaches load cells for continuously determining the weight of materials in the hopper and Allen teaches level sensors for monitoring the height of materials in the hopper. These means along with the OIT and PLC of Ladt provide the structure enabling the step of providing the aforementioned data [as in claims 3 and 4]. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the level sensors of Schuerger in the invention of Ladt, since Schuerger teaches the benefit of maintaining the level of material in the hopper in a predetermined range: this would allow an operator to know when the hopper is empty or warn of a condition in which the hopper would overflow. It is considered that it would have been obvious to one ordinarily skilled in the art at the time of the invention to have the load cells of Allen in the invention of Ladt, as modified by Schuerger, since Allen teaches benefit of determining the amount of bulk materials dispensed from a hopper—a goal of Ladt.

Art Unit: 1723

11. Contact Information:

- Examiner Mr. Terry K. Cecil can be reached at (703)305-0079 for any inquiries concerning this communication or earlier communications from the examiner.
- The group receptionist can be reached at (703)308-0661 for inquiries of a general nature or those relating to the status of this or proceeding applications.
- Wanda Walker, the examiner's supervisor, can be reached at (703)308-0457 if attempts to reach the examiner are unsuccessful.
- Fax numbers for this art unit are as follows:
  - i. (703)872-9310 for *official* faxes (i.e. faxes to be entered as part of the file history) that are not after-final; and
  - ii. (703)872-9311 if after-final.

TKC   
September 30, 2001

  
JOSEPH W. DRODGE  
PRIMARY EXAMINER